

TITLE 15. BOARD OF PRISON TERMS
NOTICE OF PROPOSED REGULATORY ACTION
RN 04-03

SUBJECT: *ATTEMPTED MURDER*

NOTICE IS HEREBY GIVEN that the Board of Prison Terms (Board) proposes to amend sections (§§) 2000, 2400 and 2403 of Title 15, Division 2, California Code of Regulations (CCR) after considering all comments, objections, and recommendations regarding the proposed action.

AUTHORITY/REFERENCE

These regulations are submitted pursuant to the Board's authority under Penal Code §§ 3052 and 5076.2 and are amended to implement, interpret, and/or make specific Penal Code sections 182, 664, 3040, 3041, 3046 and 5076.1.

PUBLIC HEARING

A public hearing regarding the proposed regulatory action has not been scheduled. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Board. ***The written comment period on the proposed regulations will close at 5:00 p.m., on July 14, 2004.*** All comments must be submitted in writing (by mail, fax, or e-mail) to the Agency Contact Person identified in this Notice by that time in order for them to be considered by the Board.

Comments may be submitted to:

Lori Manieri, Regulations Coordinator
Board of Prison Terms
1515 "K" Street, Sixth Floor
Sacramento, CA 95814
Telephone: (916) 445-5277
Facsimile No.: (916) 322-3475
E-mail: regcomment@bpt.ca.gov

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Penal Code § 5076.2 authorizes the Board to maintain, publish, and make available to the general public, a compendium of its rules and regulations.

This action will implement the recent court order in the case of *In re Thomas Sims* which found that the referral to “attempted murder” as referenced in the CCR §§ 2403 (b) and (c) does not accurately apply to prisoners who have been convicted of attempted murders.

Currently, CCR § 2403 provides matrices for life prisoners convicted of first and second degree murder consisting of “suggested base terms” which are established solely on the gravity of the base crime, taking into account all of the circumstances of that crime. The panel shall determine the category most closely related to the circumstances of the crime and impose the middle base term indicated in the matrix unless the panel finds circumstances in aggravation or mitigation. If the panel finds circumstances in aggravation or in mitigation, as provided in CCR §§ 2404 and 2405, it may impose the upper or lower base term provided in the matrix by stating the specific reasons for imposing such term. If the prisoner has been sentenced to prison for attempted willful, deliberate and premeditated murder, the panel shall refer to matrix (b), designated for first degree murders; for all other attempted murders, the panel shall refer to matrix (c), designated for second degree murders. After determining the appropriate category, the panel shall impose one-half the middle base term, unless the panel finds circumstances in aggravation or mitigation.

The proposed amendments will implement three new matrices (§ 2403(d)-(f)) for attempted murder crimes which call for a punishment of life with the possibility of parole. The matrices are analogous to the matrices for first and second degree murder, setting out categories relating to the relationship of the prisoner to the victim and the gravity and circumstances of the crime. The base terms implemented for each matrix reflect the punishments for the specific attempted murders as indicated in Penal Code § 664 (a), (e) and (f), respectively.

Further amendments (CCR § 2000) add to the list of definitions the life crimes of attempted murder of a peace officer or firefighter and attempted willful, deliberate, and premeditated murder of a peace officer or firefighter pursuant to PC § 664(e) and (f). In addition, changes to CCR § 2400 are necessary to delete reference to specific attempted murder crimes and the respective effective dates. Including all attempted murder crimes and the effective dates would be ambiguous and cumbersome. New subsection (g) of CCR § 2403, entitled “Base Terms for Other Life Crimes,” has been added for consideration of those life crimes that are not addressed in the life term matrices.

LOCAL MANDATES

The Board has determined that the proposed action imposes no mandate upon local agencies or school districts.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: *None*
- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Board has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Board has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments will not affect small businesses because they apply only to inmates and parolees of California penal institutions.

ASSESSMENT OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Board has determined that the proposed amendment to regulations will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

CONTACT PERSON

Please direct requests for copies of the initial statement of reasons, the proposed text of the regulations, or other information upon which the rulemaking is based to:

Lori Manieri, Regulations Coordinator
Board of Prison Terms
1515 "K" Street, Sixth Floor
Sacramento, CA 95814
(916) 445-5277

In any such inquiries, please identify the action by using the **Board's regulation control number RN 04-03**.

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above: **Denise Schmidt, 324-7604**.

Questions on the substance of the proposed regulatory action may be directed to: **Marc Remis, 323-3286**.

Website Access: Materials regarding this proposal can be accessed from the Board's website at: www.bpt.ca.gov.

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared and will make available the initial statement of reasons and the text of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all the information on which the proposal is based, is available to the public upon request from the agency contact person indicated above. Additionally, this notice of proposed action, the initial statement of reasons, and the proposed text of the regulations are available on the Board's Internet Home Page at (www.bpt.ca.gov).

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following the preparation of the final statement of reasons, copies may be obtained from the Board contact person, by fax, or from the Board's website.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.